

COPY

in opinion

548

January 20, 1958

NEW HAMPSHIRE LAW LIBRARY

OCT 01 1998

CONCORD, N.H.

Ray E. Tarbox, Chairman
N. H. State Liquor Commission
109 North Main Street
Concord, New Hampshire

Dear Mr. Tarbox:

In a letter of January 9, 1958, you drew our attention to RSA 571:5 which reads as follows:

"Rooms Where Liquor Is Sold. No minor under the age of eighteen years shall be admitted at any time to, or permitted to remain in, a place where spirituous or intoxicating liquors are sold under the provisions of section 4 of chapter 178, RSA, or in any licensed billiard or pool room, unless accompanied by parent or guardian. If the proprietor, keeper, or manager of any such place shall violate any provision of this section he shall be fined not more than twenty dollars."

You then referred to your Regulation permitting minors to accompany their parents into cocktail lounges (Hotel Regulation No. 11):

"No holder of a special hotel license shall allow any person under twenty-one years of age to be a guest in any cocktail room unless accompanied by their parents."

The statute relates to minors under the age of eighteen years, while your Regulation deals with persons under the age of twenty-one years; and we understand that you wish to know if the Regulation may legally stand with respect to persons over eighteen years of age but not over twenty-one. It is our judgment that your Regulation validly applies to all persons under the age of twenty-one years, according to its terms.

C O B A

Mr. Ray E. Tarbox

- 2 -

January 20, 1958

Upon first examination it might appear that the Legislature in the enactment of RSA 571:5 had thereby intended fully to deal with the subject and to state definitively the entire policy of the State in relation to the problem of minors entering cocktail lounges. Further consideration of this legislation in the light of other measures upon the statute books, however, demonstrates that RSA 571:5 is not to be taken as excluding reasonable regulations of the Commission upon the same subject.

Title XIII of the Revised Statutes Annotated comprises a comprehensive system for the regulation and control of the sale and consumption of alcoholic beverage and liquor within this State. In RSA 175, one of the chapters of this Title, the Legislature states a firm policy with respect to minors. By RSA 175:6, the sale of liquor or beverage to minors is strictly forbidden. By RSA 175:8, a minor may not be employed, whether with or without compensation, to serve or otherwise handle liquor or beverage. Violation of either of the foregoing sections by a licensee or permittee could result in the imposition of a fine upon him (RSA 182:1), as well as in the suspension or revocation of his license or permit, RSA 178:11. So firmly does the Legislature disapprove the consumption of alcoholic beverage or liquor by minors that it imposes a criminal penalty upon the minor who misrepresents his age in order to procure these products, RSA 175:7.

In another of the chapters dealing with the regulation and control of alcoholic liquor and beverage the Liquor Commission has been granted broad powers to make rules and regulations to carry out evident purposes of the Legislature in this area.

Having in mind the basic policy of the law-making body with respect to minors as set forth in the provisions of Title XIII referred to above, it is clear that the Regulation under consideration is reasonably designed as an aid in the execution of that policy. It is obvious that the Regulation will enable the Commission more effectively to enforce the statutes forbidding the sale of alcoholic beverage and liquor to minors and prohibiting the employment of minors in the handling of these products; and it will discourage attempts at evasion of these statutory directives. The Regulation is not inconsistent with RSA 171:5 but, rather, it may be deemed an extension of it made under the authority which the Legislature has conferred on the Commission in its comprehensive plan for the control of alcoholic liquor and beverage.

Alcoholic beverage and liquor may not lawfully be sold to persons between the ages of eighteen and twenty-one years in this State. Licensees who violate the law in this regard are

COPY

ATTORNEY-GENERAL

Mr. Ray E. Tarbox

- 3 -

January 20, 1958

subject to revocation of their licenses. The Regulation in question not only protects such licensees from risk of the presence of those who appear to be beyond twenty-one but have not yet attained their twenty-first birthday, but also excludes from licensees' premises those who have no lawful right to purchase. The direct relation between such a Regulation and the public welfare is clear.

We would suggest, however, that you may wish to amend your Regulation to add guardians as a class with whom minors might enter cocktail lounges.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEN/aml